

Internal Revenue Service

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Holding Company	=	
State A	=	
Parent	=	
State B	=	
Company	=	
State C	=	
Subsidiary	=	
State D	=	
Passive Investment Activities	=	

Dear :

This ruling is in response to your authorized representatives' submission dated May 2, 2013, requesting a ruling under § 806(b)(3) of the Internal Revenue Code.

FACTS

Holding Company is a State A insurance holding company. Through its direct and indirect subsidiaries, Holding Company is engaged in a wide variety of insurance, financial services and other investment-related businesses.

Holding Company is the parent company of Parent, a State B stock holding company. Parent owns all of the stock of Company, a State C company. Company is a life insurance company. Company and its affiliates' business operations consist of life insurance products, annuities, mutual funds, pension and institutional products.

Subsidiary is a State D corporation that Parent acquired. After receiving regulatory approval, Holding Company directed Parent to contribute the stock of Subsidiary to

Company. This restructuring was done for non-tax business reasons primarily related to disruptions in the credit markets and the negative impact on Company's ability to borrow and meet regulatory capital requirements following the impact of the worldwide financial crisis. Company owns all of the stock of Subsidiary. Subsidiary invests in Passive Investment Activities and also performs consulting activities with respect to similar Passive Investment Activities.

Holding Company files a life-nonlife consolidated federal income tax return with its eligible members on a calendar year basis pursuant to an election under § 1504(c)(2)(A). Both Company and Subsidiary are eligible members included in Holding Company's life-nonlife consolidated return. Holding Company group has treated Company as part of the life insurance subgroup. Holding Company group has treated Subsidiary as part of the nonlife subgroup.

Proposed Transaction

Holding Company proposes that Subsidiary segregate the consulting activities in a separate company owned by Holding Company or one of its non-life subsidiaries. Holding Company will continue to treat the consulting activity as part of the non-life subgroup. After segregation, Subsidiary will make an election in accordance with Treas. Reg. § 301.7701-3 on Form 8832 to be disregarded as a separate entity ("check-the-box election"). Following the check-the-box election, Company, for federal income tax purposes, will hold the assets relating to the Passive Investment Activities and will continue such investment activities to support life insurance and annuity contracts issued by Company.

RULING REQUESTED

Subsidiary's Passive Investment Activities are properly treated as an insurance business following Subsidiary's check-the-box election and therefore Subsidiary's income and expenses should be included in computing tentative LICTI and not limited by §§ 806(b)(3)(C) or 1503(c).

LAW

Section 801(a) imposes a tax for each taxable year on the life insurance company taxable income ("LICTI") of every life insurance company. In computing LICTI, any loss from a noninsurance business is limited under the principles of § 1503(c). Section 806(b)(3)(C). Section 806(b)(3)(A) defines "noninsurance business" as "any activity which is not an insurance business." Section 806(b)(3)(B) further provides that any activity which is not an insurance business is treated as an insurance business if it is of the type traditionally carried on by life insurance companies for investment purposes but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business.

The legislative history to § 806 provides the following:

For these purposes, noninsurance business means any business which is not an insurance business. Generally, insurance business refers to the business activity of issuing insurance and annuity contracts and the reinsuring of risks underwritten by insurance companies, together with investment activities and administrative services that are required to support or are substantially related to contracts issued or reinsured by the taxpayer. Thus, for example, if a life insurance company ran a manufacturing business directly (rather than owning stock in the company), any income or deduction items attributable to the manufacturing business would not be taken into account in computing tentative LICTI. . . .

The concept of noninsurance business is further modified by a provision that any business that is not insurance business but is of a type traditionally carried on by life insurance companies for investment purposes is to be treated as insurance business. This modification recognizes that insurance companies have traditionally engaged in certain types of income-producing activities as investments, whether directly or through partnership interests, that could be viewed as noninsurance business activities. Examples would be the ownership and rental of real estate and the development and sale of real estate.

H.R. Rep. No. 432, 98th Cong., 2nd Sess. 1407-1408 (1984). To the extent a life insurance company has losses from a noninsurance business, §§ 803(b)(3)(C) and 1503(c) limit the use of nonlife losses against life income to the lesser of 35 percent of the nonlife losses or 35 percent of the life income, and also limit the carryover of unused losses to 35 percent.

ANALYSIS

Under § 806(b)(3)(A), a “noninsurance business” is “any activity which is not an insurance business.” Thus, the initial question is whether the activity qualifies as an “insurance business.” The legislative history provides that insurance business includes issuing insurance and annuity contracts, reinsuring risks underwritten by insurance companies, as well as investment activities and administrative services that are required to support or are substantially related to contracts issued or reinsured by the taxpayer. H.R. Rep. No. 432, 98th Cong., 2nd Sess., pt. 2, pp. 1407-1408 (1984).

If the activity is not an “insurance business,” it is treated as an insurance business if (1) it is of the type traditionally carried on by life insurance companies for investment purposes, and (2) the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business. Section 806(b)(3)(B). If the activity meets this two-prong test, it is treated as an insurance business.

Following Subsidiary’s check-the-box election, the assets relating to the Passive Investment Activities will be held by Company. Company will hold the passive

investment assets to support life insurance and annuity contracts issued by Company. Moreover, it is an activity of the type traditionally carried on by life insurance companies for investment purposes and the carrying on of such activity does not constitute the active conduct of a trade or business. Accordingly, the Passive Investment Activities will not be considered a noninsurance business under § 806(b)(3).

CONCLUSION

Based on the representations and facts presented by the taxpayer, Subsidiary's Passive Investment Activities are properly treated as an insurance business following Subsidiary's check-the-box election and therefore Subsidiary's income and expenses should be included in computing tentative LICTI and not limited by §§ 806(b)(3)(C) or 1503(c).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the authorization on file with this office, copies of this letter are being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

SHERYL B. FLUM
Chief, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: